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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,239	07/14/2000	John Burwell	2549-098-27	5372

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EXAMINER	
MEREK, JOSEPH C	
ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

5D

Office Action Summary	Application No.	Applicant(s)	
	09/617,239	BURWELL ET AL.	
	Examiner	Art Unit	
	Joseph C. Merek	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *9-12,14-18 and 20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,13 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the election requirement in Paper No. 5 is acknowledged. The traversal is on the ground(s) that all the examination of all the inventions would not pose a serious burden on the examiner. This is not found persuasive because applicant has not presented any evidence supporting his allegation of lack of serious burden. The examiner provided evidence of the burden in above specified paper. See MPEP 803 where evidence is required to rebut the examiner's position. The species election has noting to do with burden. See MPEP 808.01(a) where election of species are discussed. Claims 19 and 20 were inadvertently left out of the restriction requirement. Claim 20 is included with group II since it depends from claim 14. Claim 19 is included with applicant's election of Group I since it depends from claim 1 and is broad enough to read on both species. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Mastandrea et al (US 5,295,391). Regarding claim 1, see Fig. 1, where the sealing

dome is 20a. The tank is pressure tested using the dome therefore an air tight seal is made. 20a is a dome since the corners are rounded where the sidewall meets the end wall. Regarding claim 2, the dome has a flanged end sized to accept the riser and the sealing dome is positioned with the flanged end over a top of the riser. The flange is the part that extends away from the end wall of the dome and slides over the riser. Regarding claim 13, the dome has a circular circumferential shape. Regarding claim 19, the tank is capable of holding wastewater.

Claim 1, 6-8, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 4,112,644). Regarding claim 1, see Fig. 7, where 11 is the dome, 23 is the flange and 12 is the riser. The upper end of the wall of the tank is the riser and the lower end is the main body. Regarding claims 6-8, the parts are made of fiberglass. Regarding claim 13, the dome has a circular circumferential shape. Regarding claim 19, the tank is capable of holding wastewater.

Claims 1, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lankston (US 4,335,757). Regarding claim 1, see Fig. 2, 10 is the tank, 12 is the riser, and 14 is the dome. The connection between the dome and the riser is airtight. Regarding claim 13, the dome 12 has a circular circumferential shape. Regarding claim 19, the tank is capable of holding wastewater.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mastandrea et al in view of Allen. Regarding claim 3, Mastandrea et al does not teach the sealing band around the dome. Allen as seen in Fig. 7, teaches a band 20 around the flanged joint including a fillet. It would have been obvious to employ the band and fillet of Allen in the tank of Mastandrea to provide a method of sealing the joint as taught by Allen. Regarding claim 4, see the fillet 31 where the claimed surfaces are shown. Regarding claim 5, the angle is approximately 45 degrees. Regarding claims 6-8, Mastandrea et al teaches testing an underground fuel tank with a riser and a dome but does not teach the material for the dome, the riser, and the sealing band. Allen teaches an all fiberglass structure including the fiberglass band. It would have been obvious to employ the fiberglass of Allen in the tank of Mastandrea et al to provide a tank that will not rust. Moreover, it is well known to make underground tanks from fiberglass. It would have been obvious to employ the method of Mastandrea et al on a fiberglass tank to detect leakage.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen. Regarding claim 2, Allen, as seen in Fig. 7, discloses the claimed invention except for the flange of the dome is inside of the riser instead of it being over the riser. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flange of the dome go over the top of the riser, since it has been held that a mere reversal of the essential working parts of a device involves

only routine skill in the art. *In re Einstein*, 8 USPQ 167. Regarding claim 3, see Fig. 7, where the sealing band 20 is shown and the seal is airtight. Regarding claim 4, see Fig. 7, where the fillet 31 with the claimed surfaces is shown. Regarding claim 5, the angle is approximately 45 degrees.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Boggs. Regarding claim 2, Allen teaches the dome being inside the rider and but not over the riser. Boggs teaches a fiberglass tank with a domed lid similar to Allen where the dome is over the top of the riser. It would have been obvious to employ the outside flange of Boggs in tank of Allen to provide an alternative method of forming the joint. Regarding claim 3, see Fig. 7, where the sealing band 20 is shown and the seal is airtight. Regarding claim 4, see Fig. 7, where the fillet 31 with the claimed surfaces is shown. Regarding claim 5, the angle is approximately 45 degrees.

Claims 1, 2, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mastandrea et al in view of Lankston. Regarding claim 1, to the degree that the cover of Mastandrea et al does not have the required shape for a dome, then it would have been obvious to employ the shape of Lankston in the cover of Mastandrea et al to provide for greater volume or an alternative shaped cover. Regarding claim 2, the dome has a flanged end sized to accept the riser and the sealing done is positioned with the flanged end over a top of the riser. The flange is the part that extends away from the end wall of the cap and slides over the riser. Regarding claim 13, the dome has a circular circumferential shape. Regarding claim 19, the tank is capable of holding wastewater.

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mastandrea et al in view of Lankston and further in view of Allen. Regarding claim 3, the modified tank of Mastandrea et al does not teach the sealing band between the dome and the riser. Allen as seen in Fig. 7, teaches a band 20 wrapped around the flanged joint that includes a fillet. It would have been obvious to employ the band and fillet of Allen in the modified tank of Mastandrea to provide a method of sealing the joint as taught by Allen. Regarding claim 4, see the fillet 31 where the claimed surfaces are shown. Regarding claim 5, the angle is approximately 45 degrees. Regarding claims 6-8, Mastandrea et al teaches testing an underground fuel tank with a riser and a dome but does not teach the material for the dome, the riser, and the sealing band. Allen teaches an all fiberglass structure including the fiberglass band. It would have been obvious to employ the fiberglass of Allen in the modified tank of Mastandrea et al to provide a tank that will not rust. Moreover, it is well known to make underground tanks from fiberglass. It would have been obvious to employ the method of Mastandrea et al on a fiberglass tank to determine or detect leakage.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cass is cited for teaching a wrapped joint with a fillet. Gibb, House et al, and Hammond are all cited for teaching wrapped joints.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Joseph C. Merek
October 30, 2002

LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700